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09/717,553	11/21/2000	Ian B. Malpass	0315	1696

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EXAMINER

LONEY, DONALD J

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 05/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

A3-3

# Office Action Summary

Application No.

09/717553

Applicant(s)

Malpass et al

Examiner

D. Loney

Group Art Unit

1777

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 - 17 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1 - 15 is/are rejected.
- ☒ Claim(s) 16 and 17 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1) Claims 16 and 17 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer back into the alternative only. See MPEP § 608.01(n).

Accordingly, the claims 16 and 17 have not been further treated on the merits.

2) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Claims 5, 7 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, lines 2 to 3 contain an improper Markush group. Proper language is either 1) selected from the group consisting of A, B, and C or 2) selected from A, B or C. Correction is kindly requested.

4) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

5) (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6) Claims 1-10, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomarin.

Tomarin teach a mat with a carpet top layer and a bottom layer containing round depressions and/or indentations (30). Refer to fig. Nos. 1 and 5 along with column 1, lines 38-50, column 2, lines 41-69 and column 3, lines 56-60.

7) Claims 1, 2, 4-10, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al.

Anderson et al also teach a mat with a carpet top and the base layer containing depressions (19). Refer to column 3, lines 16-47 and column 4, lines 18-29.

8) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9) Claims 11, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Tomarin or Anderson et al in view of Sumimoto et al.

The primary references teach the invention substantially as claimed. See 35 U.S.C. 102 rejection above. They do fail to specifically teach the difference in hardness and/or the anti-bacterial feature.

Sumimoto et al teaches it is known to incorporate anti-bacterial properties in to mats in order to <sup>impart</sup> ~~import~~ this property thereto. Refer to column 4, lines 16-20.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to incorporate and anti-bacterial materials , as is taught by Sumimoto et al, in order for the mat to have this feature for protection purposes.

The examiner deems the softer lower layer in relation to the top layer as obvious to one of ordinary skill in the art since the top layer has to be tougher than the lower and the lower layer typically provides the majority of the cushioning effect in mats so it would need to be softer.

8) Any inquiry concerning this communication should be directed to Ex. D. Loney at telephone number (703) 308-2416.

Loney/LR

May 14, 2002



DONALD J. LONEY  
PRIMARY EXAMINER